IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9315 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

WADHWAN NAGAR PALIKA

Versus

JIVABHAI OGHADBHAI

Appearance:

1. Special Civil Application No. 9315 of 2003

MR GAURANG H BHATT for Petitioner No. 1

MRS DT SHAH for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 06/04/2004

ORAL JUDGEMENT

Leave to delete Respondents No.3 and 4 and leave to add District, Collector, Surendranagar as party

respondent.

Rule. Mrs.D.T.Shah appears for Respondents No.1 and 2 waives notice of rule.

3. Mr.Mengdey, learned AGP is directed to appear on behalf of the District Collector and waives notice of rule. With the consent of the parties the matter is taken up for final hearing.

4. The present petition is preferred by the petitioner challenging the award passed by the Tribunal in Reference (IT) No.3/2002 upon consent purshis submitted on behalf of the then Office-bearers of the petitioner Municipality at that time.

5. Heard Mr.Bhatt, learned Counsel for the petitioner, Mrs.Shah, learned Counsel for the workmen concerned and Mr.Mengdey, learned AGP for the District Collector.

6. It is the case of the petitioner that the then office-bearers of the Municipality for the reasons best known to them acted by consent pushis contrary to the statement of defence filed in the proceedings of the Reference on behalf of the Municipality. Mr.Bhatt submitted that in the said statement of defence it was, inter alia, contended that the workmen concerned are not regularly selected and they are not entitled to the benefits of permanent employees.

7. On behalf of respondents No.1 and 2, Mrs.Shah submitted that as such it was compromised and by way of compromise the workmen have not received any backwages and other benefits, which he would have been entitled, had the reference been decided on merits and, therefore, she submitted that the office-bearers of the Municipality also agreed for the same and consent purshis was submitted. However, upon instructions from her clients, she ultimately declared that the respondents had also abondoned the right pursuant to the settlement and in case said settlement is not acceptable to the Municipality, the consent award passed by the Tribunal may be set aside and the Reference may be ordered to be decided on merits.

8. I would have recorded the reasons for setting aside of the award passed by the Tribunal upon consent purshis consented by the then office-bearers of the Municipality, including the question as to whether they had any authority to give a go-by to the settled norms of

public employment or not. However, since on behalf of the workmen concerned, Mrs.Shah has agreed for remand of the matter and of setting aside of the award passed by the Tribunal, I find that it is not necessary to record the reasons further as the matter is yet to be decided afresh by the Tribunal even if the case of the petitioner is accepted for remand.

9. Under the above circumstances, the award passed by the Tribunal dated 28-1-2003 in Reference (IT) No.3/2002 is quashed and set aside with the further direction that the Reference shall stand restored to the Tribunal and the Tribunal shall decide the Reference in accordance with law after giving opportunity of hearing to all concerned, as early as possible, preferably within a period of six months from the date of receipt of writ of this Court. The petition shall stand allowed to the aforesaid extent. Considering the facts and circumstances, no costs.

10. Before parting with, it is required to be noted that in every Municipality there is a sanctioned set up and for filling up of the posts of sanctioned set up, the Municipality has to follow the settled norms of regular recruitment process for such public employment. It would be against the public interest if powers are read with the office-bearers of the Municipality to give a total go-by to the settled norms of public employment and to confer benefits upon the employees who have not entered the service by regular selection process. I find it proper to leave the matter at that stage. Suffice it to say that it would be for the Collector to examine the matter in his supervisory jurisdiction under Gujarat Municipalities Act and to take action in accordance with law. Disposed of accordingly. Rule made absolute accordingly.

6-4-2004 (Jayant Patel, J.)

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